

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

SCRIPPS HOWARD)
BROADCASTING COMPANY)

For Renewal of License of)
Station WMAR-TV,)
Baltimore, Maryland)

and)

FOUR JACKS BROADCASTING, INC.)

For Construction Permit for a)
New Television Facility on)
Channel 2 at Baltimore,)
Maryland)

MM Docket No. 93-940

File No. BRCT-910603KX

File No. BPCT-910903KE

To: The Honorable Richard L. Sippel
Administrative Law Judge

**RESPONSE TO "OPPOSITION TO MOTION FOR SUMMARY
DECISION BY FOUR JACKS BROADCASTING, INC. AND
CROSS-MOTION FOR SUMMARY DECISION
DISQUALIFYING FOUR JACKS BROADCASTING, INC."**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its
attorneys, hereby submits this brief response to the pleading
entitled "Opposition to Motion for Summary Decision by Four Jacks
Broadcasting, Inc. and Cross-Motion for Summary Decision
Disqualifying Four Jacks Broadcasting, Inc.," filed by Scripps

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List A B C D E

Howard Broadcasting Company ("Scripps Howard") on March 14, 1994.^{1/}

1. On February 28, 1994, Four Jacks filed a Motion for Summary Decision in its favor on the issues added against it by Memorandum Opinion and Order, FCC 94M-51 (released February 1, 1994). Under Section 1.251(b) of the Commission's Rules, Scripps Howard had two options: (i) oppose Four Jacks' Motion for summary decision; or (ii) file a countermotion for summary decision. It could not do both. See Section 1.251(b) ("[w]ithin 14 days after a motion for summary decision is filed, any other party to the proceeding may file an opposition or a countermotion for summary decision") (emphasis added). Yet by its pleading, Scripps Howard has attempted to file both an opposition and a countermotion -- a course that is prohibited by the Commission's rules.

2. Thus, under the Commission's procedural rules, Scripps Howard's March 14, 1994 pleading must be considered either as an opposition to Four Jacks' motion for summary decision, or as a countermotion for summary decision adverse to Four Jacks. The pleading cannot be considered as both. Even a cursory examination of the pleading reveals that it fails entirely to meet the standards for a countermotion for summary decision -- i.e., the standards applicable to an original motion for summary

^{1/} As discussed herein, Scripps Howard's March 14, 1994 pleading is procedurally deficient, and good cause therefore exists for this brief response. To the extent necessary, Four Jacks requests leave to file this pleading.

decision. See 47 C.F.R. § 1.251(a)(1) (party moving for summary decision "may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing"). Thus, Scripps Howard's March 14 pleading can only be considered as an opposition to Four Jacks' February 28 motion for summary decision. Scripps Howard's pleading should be stricken to the extent it purports to be a countermotion for summary decision.

3. In the unlikely event Scripps Howard's pleading is found to be a procedurally proper countermotion for summary decision, however, fairness demands that Four Jacks be permitted an opposition to the countermotion. Cf. 47 C.F.R. § 1.251(b) (permitting oppositions to motions for summary decision). This is especially true where, as here, (i) Scripps Howard has impermissibly combined its countermotion with its opposition to Four Jacks' original motion; and (ii) Scripps Howard has utilized its improper multiple pleading to raise a number of new allegations -- among them an assertion that Four Jacks has failed adequately to comply with document production.^{2/}

In sum, Four Jacks respectfully requests the Presiding Judge to strike Scripps Howard's March 14, 1994 pleading to the extent

^{2/} In impermissibly combining an opposition with a countermotion and raising new allegations along the way, Scripps Howard undoubtedly was aware that replies to its opposition to Four Jacks' motion for summary decision were not contemplated.

it represents a counter motion for summary decision. Should Scripps Howard's procedurally deficient counter motion be allowed, Four Jacks requests the Judge to permit Four Jacks an opportunity to oppose Scripps Howard's counter motion.

Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

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Dated: March 28, 1994

CERTIFICATE OF SERVICE

I, Leslie B. Payne, a secretary in the law firm of Fisher, Wayland, Cooper, Leader, & Zaragoza, do hereby certify that true copies of the foregoing **"RESPONSE TO 'OPPOSITION TO MOTION FOR SUMMARY DECISION BY FOUR JACKS BROADCASTING, INC. AND CROSS-MOTION FOR SUMMARY DECISION DISQUALIFYING FOUR JACKS BROADCASTING, INC.'"** were sent this 28th day of March, 1994, by first class United States mail, postage prepaid, to the following:

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